

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

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| ONE STOP SHOP N GO, INC., |) | |
| |) | |
| Petitioner, |) | |
| v. |) | No. 16 TT 15 |
| |) | Chief Judge James M. Conway |
| |) | |
| ILLINOIS DEPARTMENT OF REVENUE, |) | |
| |) | |
| Respondent. |) | |

DEPARTMENT'S ANSWER TO PETITION

Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the "Petition"), hereby states as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 15401 Center A venue, Harvey, Illinois, 60426, and can be reached at 708-986-2925.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner is represented by attorney James E. Dickett located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The Department admits the allegations contained in paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 4002-5934.

ANSWER: The Department admits the allegations contained in paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

NOTICE

5. On November 19, 2015, the Department issued a Notice of Tax Liability letter ("Notice") to Petitioner for a sales/use tax audit for the tax periods January 1, 2011 to December 31, 2013. The Notice reflects \$139,915 in net tax due, \$27,983 in late payment penalties, \$27,983 in negligence penalties, and \$10,178 in interest, for a total of \$206,059. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents referred to in paragraph 5 and state that such document speaks for itself.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: The Department admits the allegations contained in paragraph 6.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

ANSWER: Although paragraph 7 is not an allegation of a material facts but a legal conclusion, the Department admits the allegations/legal conclusion contained in paragraph 7.

BACKGROUND

8. Petitioner is a liquor and grocery store located in the south suburbs of Chicago near the Indiana border.

ANSWER: The Department admits the allegations contained in paragraph 8.

9. Defendant audited Petitioner for the tax periods January 1, 2011 to December 31, 2013.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products, but the Department's projections do not adequately provide allowances for low rate sales, inventory fluctuations, and inventory losses like customer theft, spoilage, breakage, etc.

ANSWER: The Department admits that its audit determination was based on multiplying Petitioner's purchases by industry standard selling prices but deny the remaining allegations of Paragraph 10 as legal conclusions, not material allegations of facts.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying all of Petitioner's purchases by estimated selling prices.

ANSWER: The Department admits the allegations contained in paragraph 12.

13. By applying such estimated prices to Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department especially with respect to liquor sales due to the location of the business and its customer base, and also because the Department's projections improperly failed to provide allowances for low rates sales and inventory changes/losses.

ANSWER: Although paragraph 12 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 12.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count I of this matter;
- B) That the Department's Notice of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT II

All penalties should be abated based on reasonable cause

14. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

15. In its Notice, the Department assessed penalties based on the audit liability.

ANSWER: document The Department admits the existence, force and effect, at all relevant times of the document referred to in paragraph 15 and state that such document speaks for itself.

16. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 16 and state such statute speaks for itself.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion, and a taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 16 and state such regulation speaks for itself.

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 18 and state such regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices, so neither the late payment penalties nor the negligence penalties are proper.

ANSWER: Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 19.

WHEREFORE, the Department prays:

A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;

- B) That the Department's Notices of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By _____
Michael Coveny,
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on March 10, 2016

A handwritten signature in black ink, appearing to read "Michael Coveny", is positioned above a horizontal line.

Michael Coveny,
Assistant Attorney General